



## Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

5 September 2012\*

(Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant and surrender procedures between Member States — Article 4(6) — Ground for optional non-execution of the European arrest warrant — Implementation in national law — Arrested person is a national of the issuing Member State — European arrest warrant issued for the purposes of enforcing a custodial sentence — Legislation of a Member State restricting the power not to execute the European arrest warrant to cases where the requested persons are nationals of that State)

In Case C-42/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the cour d'appel d'Amiens (France), made by decision of 18 January 2011, received at the Court on 31 January 2011, in the proceedings concerning the execution of a European arrest warrant issued against

**João Pedro Lopes Da Silva Jorge,**

THE COURT (Grand Chamber),

composed of V. Skouris, President, A. Tizzano, J.N. Cunha Rodrigues, K. Lenaerts, J.-C. Bonichot and U. Löhmus, Presidents of Chambers, A. Rosas, E. Levits, A. Ó Caoimh (Rapporteur), L. Bay Larsen, T. von Danwitz, A. Arabadjiev and C.G. Fernlund, Judges,

Advocate General: P. Mengozzi,

Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 31 January 2012,

after considering the observations submitted on behalf of:

- Mr Lopes Da Silva Jorge, by D. Fayein-Bourgeois, avocat,
- the French Government, by G. de Bergues, J.-S. Pilczer and B. Beaupère-Manokha, acting as Agents,
- the Czech Government, by M. Smolek and J. Vlácil, acting as Agents,
- the German Government, by T. Henze and J. Kemper, acting as Agents,
- the Netherlands Government, by C. Wissels and M. Bulterman, acting as Agents,

\* Language of the case: French

— the Austrian Government, by C. Pesendorfer, acting as Agent,  
— the Polish Government, by M. Szpunar, M. Arciszewski and B. Czech, acting as Agents,  
— the European Commission, by W. Bogensberger and R. Troosters, acting as Agents,  
after hearing the Opinion of the Advocate General at the sitting on 20 March 2012,  
gives the following

### **Judgment**

- 1 This reference for a preliminary ruling concerns the interpretation of Article 4(6) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1) and of Article 18 TFEU.
- 2 The reference has been made in the context of the execution in France of a European arrest warrant issued on 14 September 2006 by the tribunal criminal de Lisboa (Criminal Court of Lisbon, Portugal), against Mr Lopes Da Silva Jorge, a Portuguese national resident in France, for the purposes of enforcing a penalty of five years' imprisonment for drug trafficking.

### **Legal context**

#### *International law*

- 3 Article 2(2) of the Convention on the Transfer of Sentenced Persons, signed at Strasbourg, on 21 March 1983, provides:  
  
'A person sentenced in the territory of a Party may be transferred to the territory of another Party, in accordance with the provisions of this Convention, in order to serve the sentence imposed on him. To that end, he may express his interest to the sentencing State or to the administering State in being transferred under this Convention.'
- 4 Article 3 of that convention provides:  
  
'1. A sentenced person may be transferred under this Convention only on the following conditions:  
  
(a) if that person is a national of the administering State;  
  
...  
  
4. Any State may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, define, as far as it is concerned, the term "national" for the purposes of this Convention.'

*European Union law*

Framework Decision 2002/584

5 Recitals 1 and 5 to 8 in the preamble to Framework Decision 2002/584 are worded as follows:

‘(1) According to the Conclusions of the Tampere European Council of 15 and 16 October 1999, and in particular point 35 thereof, the formal extradition procedure should be abolished among the Member States in respect of persons who are fleeing from justice after having been finally sentenced and extradition procedures should be speeded up in respect of persons suspected of having committed an offence.

...

(5) The objective set for the Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities. ... Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.

(6) The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the “cornerstone” of judicial cooperation.

(7) Since the aim of replacing the system of multilateral extradition built upon the European Convention on Extradition of 13 December 1957 cannot be sufficiently achieved by the Member States acting unilaterally and can therefore, by reason of its scale and effects, be better achieved at Union level, the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 2 [TEU] and Article 5 [EEC]...

(8) Decisions on the execution of the European arrest warrant must be subject to sufficient controls, which means that a judicial authority of the Member State where the requested person has been arrested will have to take the decision on his or her surrender.’

6 Article 1 of Framework Decision 2002/584 defines the European arrest warrant and the obligation to execute it as follows:

‘1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.

...’

7 Article 3 of that framework decision lists three ‘[g]rounds for mandatory non-execution of the European arrest warrant’.

- 8 Article 4 of Framework Decision 2002/584, which relates to the grounds for optional non-execution of the European arrest warrant, lists those grounds in seven paragraphs. Article 4(6) provides in that regard:

‘The executing judicial authority may refuse to execute the European arrest warrant:

...

- (6) if the European arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law.’

Framework Decision 2008/909/JHA

- 9 Recitals 2 and 4 of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ 2008 L 327, p. 27), are worded as follows:

‘(2) On 29 November 2000 the Council, in accordance with the Tampere conclusions, adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters [OJ 2001 C 12, p. 10], in which it called for an assessment of the need for modern mechanisms for the mutual recognition of final sentences involving deprivation of liberty (Measure 14) and for extended application of the principle of the transfer of sentenced persons to cover persons resident in a Member State (Measure 16).

...

- (4) All the Member States have ratified the Council of Europe Convention on the Transfer of Sentenced Persons of 21 March 1983. Under that Convention, sentenced persons may be transferred to serve the remainder of their sentence only to their State of nationality and only with their consent and that of the States involved. The Additional Protocol to that Convention of 18 December 1997, which allows transfer without the person’s consent, subject to certain conditions, has not been ratified by all the Member States. Neither instrument imposes any basic duty to take charge of sentenced persons for enforcement of a sentence or order.’

- 10 Paragraph 1 of Article 3, entitled ‘Purpose and scope’, of that framework decision states:

‘The purpose of this Framework Decision is to establish the rules under which a Member State, with a view to facilitating the social rehabilitation of the sentenced person, is to recognise a judgment and enforce the sentence.’

- 11 Article 17 of that framework decision, entitled ‘Law governing enforcement’, provides at paragraph 1:

‘The enforcement of a sentence shall be governed by the law of the executing State. The authorities of the executing State alone shall, subject to paragraphs 2 and 3, be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early or conditional release.’

- 12 Article 25 of Framework Decision 2008/909, entitled ‘Enforcement of sentences following a European arrest warrant’, is worded as follows:

‘Without prejudice to Framework Decision [2002/584] provisions of this Framework Decision shall apply, *mutatis mutandis* to the extent they are compatible with provisions under that Framework Decision, to enforcement of sentences in cases where a Member State undertakes to enforce the

sentence in cases pursuant to Article 4(6) of that Framework Decision, or where, acting under Article 5(3) of that Framework Decision, it has imposed the condition that the person has to be returned to serve the sentence in the Member State concerned, so as to avoid impunity of the person concerned.’

- 13 Article 26(1) of Framework Decision 2008/909, which, according to the title of that article, concerns the relationship with other agreements and arrangements, provides:

‘Without prejudice to their application between Member States and third States and their transitional application according to Article 28, this Framework Decision shall, from 5 December 2011, replace the corresponding provisions of the following conventions applicable in relations between the Member States:

— The European Convention on the transfer of sentenced persons of 21 March 1983 and the Additional Protocol thereto of 18 December 1997,

...’.

- 14 Article 28(1) of that framework decision provides:

‘Requests received before 5 December 2011 shall continue to be governed in accordance with the existing legal instruments on the transfer of sentenced persons. Requests received after that date shall be governed by the rules adopted by Member States pursuant to this Framework Decision.’

- 15 Article 29(1) of Framework Decision 2008/909 provides:

‘Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 5 December 2011.’

#### *French law*

- 16 Article 695-24 of the French Code of Criminal Procedure (code de procédure pénale) states:

‘The execution of a European arrest warrant may be refused

...

(2) If the person requested for the purposes of executing a custodial sentence or a measure involving deprivation of liberty is of French nationality and the competent French authorities undertake to execute that sentence or measure.

...’.

#### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

- 17 By judgment of 3 December 2003, which has become *res judicata*, the tribunal criminal de Lisboa sentenced Mr Lopes Da Silva Jorge to five years’ imprisonment for the criminal offence of drug trafficking, committed between April 2002 and July 2002.
- 18 On 14 September 2006, that court issued a European arrest warrant against Mr Lopes Da Silva Jorge with a view to enforcement of that sentence.

- 19 Mr Lopes Da Silva Jorge subsequently moved to France. He married a French national on 11 July 2009, with whom he has been resident in French territory ever since. As from 3 February 2008, he has been employed as a long-distance lorry driver in France under a contract of indefinite duration by a company established in that Member State.
- 20 On 19 May 2010, following a summons issued by telephone, Mr Lopes Da Silva Jorge presented himself to the competent French police department, which thereby proceeded to give effect to the European arrest warrant issued against him and informed him of his rights.
- 21 On 20 May 2010, after conducting an examination to establish the identity of Mr Lopes Da Silva Jorge and informing him of the contents of that European arrest warrant and of his rights of defence, the Public Prosecutor attached to the cour d'appel d'Amiens (Court of Appeal, Amiens) (France) ordered his imprisonment.
- 22 By judgment of 25 May 2010, the cour d'appel d'Amiens decided to release Mr Lopes Da Silva Jorge and placed him on bail.
- 23 In the course of the main proceedings relating to the execution of the European arrest warrant in question, the Public Prosecutor attached to the cour d'appel d'Amiens requested that Mr Lopes Da Silva Jorge be surrendered to the issuing judicial authorities on the ground that the warrant had been issued by those authorities in accordance with the relevant statutory requirements and that none of the grounds for mandatory or optional non-execution laid down, in particular, by Article 695-24 the French Code of Criminal Procedure applied. When asked to express a view on the impact of the Court's judgment in Case C-123/08 *Wolzenburg* [2009] ECR I-9621, the Public Prosecutor attached to the cour d'appel d'Amiens stated that Mr Lopes Da Silva Jorge is entitled to invoke the French legislation laying down the conditions under which the competent authority may refuse to execute a European arrest warrant issued for the purposes of enforcing a custodial sentence and therefore Article 695-24 of the Code of Criminal Procedure. However, the Public Prosecutor notes that the ground in that article for refusing to execute a European arrest warrant in relation to French nationals only is optional and is in accordance with Article 4(6) of Framework Decision 2002/584. As the chambre criminelle de la Cour de cassation (Criminal Chamber of the Court of Cassation) (France) held in its judgment of 7 February 2007 (No 07-80.162, Bull. Crim. No 39), Article 695-24 of the Code of Criminal Procedure thus applies only to French nationals and on condition that the competent French authorities have undertaken to enforce the sentence themselves.
- 24 Mr Lopes Da Silva Jorge asks the cour d'appel d'Amiens not to execute the European arrest warrant and to order his sentence of imprisonment to be served in France. In that connection, Mr Lopes Da Silva Jorge submits, in particular, that his surrender to the Portuguese judicial authorities would be contrary to Article 8 of European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950. It would disproportionately undermine his right to respect for private and family life, since he lives in France at the home of his wife, a French national, and he is employed in that Member State as a long-distance lorry driver under a contract of indefinite duration by a French company. Mr Lopes Da Silva Jorge also submits, relying on *Wolzenburg*, that, inasmuch as it limits to French nationals alone the optional ground for refusing execution under Article 4(6) of Framework Decision 2002/584, Article 695-24 of the Code of Criminal Procedure incorrectly transposes that provision, since Article 4(6) allows that ground also to be used in relation to the residents of the executing Member State. This gives rise, moreover, to discrimination on grounds of nationality within the meaning of Article 18 TFEU, in so far as the difference in treatment introduced by that national provision between the nationals of the Member State in question and the nationals of other Member States is not objectively justified.

- 25 In the order for reference, the cour d'appel d'Amiens raises the question whether, in the light of the *Wolzenburg* judgment, Article 695-24 of the Code of Criminal Procedure is consistent with Article 4(6) of Framework Decision 2002/584 and Article 18 TFEU, to the extent that Article 695-24 limits the possibility of benefiting from the ground for optional non-execution of a European arrest warrant under Article 4(6) solely to French nationals.
- 26 In those circumstances, the cour d'appel d'Amiens decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '(1) Does the principle of non-discrimination laid down by Article [18 TFEU] preclude national legislation such as Article 695-24 of the [French] Code of Criminal Procedure which restricts the power to refuse to execute a European arrest warrant issued for the purposes of enforcing a penalty involving deprivation of liberty to cases where the person whose extradition is sought is of French nationality and the competent French authorities undertake to proceed with such enforcement?
- (2) Is the principle of the implementation in domestic law of the grounds for non-enforcement provided for in Article 4(6) of [Framework Decision 2002/584] a matter for the discretion of the Member States or is it compulsory, and in particular may a Member State adopt a measure involving discrimination based on nationality?'

### Consideration of the questions referred

- 27 By its questions, which must be examined together, the cour d'appel d'Amiens essentially asks whether Article 4(6) of Framework Decision 2002/584 and Article 18 TFEU must be interpreted as meaning that an executing Member State may – in transposing Article 4(6) – limit the situations in which its executing judicial authority may refuse to surrender a person who falls within the scope of that provision by excluding automatically and absolutely the nationals of other Member States who are staying or resident in its territory.
- 28 It should be recalled that, as is apparent in particular from Article 1(1) and (2) of Framework Decision 2002/584 and from recitals 5 and 7 in the preamble thereto, the purpose of that decision is to replace the multilateral system of extradition between Member States with a system of surrender, as between judicial authorities, of convicted persons or suspects for the purpose of enforcing judgments or of criminal proceedings, that system of surrender being based on the principle of mutual recognition (see Case C-303/05 *Advocaten voor de Wereld* [2007] ECR I-3633, paragraph 28; Case C-66/08 *Kozłowski* [2008] ECR I-6041, paragraphs 31 and 43; *Wolzenburg*, paragraph 56; and Case C-261/09 *Mantello* [2010] ECR I-11477, paragraph 35).
- 29 That principle means that, in accordance with Article 1(2) of Framework Decision 2002/584, the Member States are as a rule obliged to act upon a European arrest warrant (see, to that effect, Case C-388/08 PPU *Leymann and Pustovarov* [2008] ECR I-8983, paragraph 51; *Wolzenburg*, paragraph 57; and *Mantello*, paragraphs 36 and 37).
- 30 Although the system established by Framework Decision 2002/584 is based on the principle of mutual recognition, that recognition does not mean that there is an absolute obligation to execute the arrest warrant that has been issued. The system established by that framework decision, as evidenced inter alia by Article 4 thereof, makes it possible for the Member States to allow the competent judicial authorities, in specific situations, to decide that a sentence must be enforced on the territory of the executing Member State (Case C-306/09 *I. B.* [2010] ECR I-10341, paragraphs 50 and 51).

- 31 That is true, in particular, of Article 4(6) of Framework Decision 2002/584 which sets out a ground for optional non-execution of the European arrest warrant under which the executing judicial authority may refuse to execute such a warrant issued for the purposes of enforcing a custodial sentence where the requested person 'is staying in, or is a national or a resident of, the executing Member State', and that State undertakes to enforce that sentence in accordance with its domestic law.
- 32 In that regard, the Court has held that that ground for optional non-execution has in particular the objective of enabling the executing judicial authority to give particular weight to the possibility of increasing the requested person's chances of reintegrating into society when the sentence imposed on him expires (see *Kozłowski*, paragraph 45; *Wolzenburg*, paragraphs 62 and 67, and *I. B.*, paragraph 52).
- 33 Nevertheless, when implementing that provision, the Member States have a certain margin of discretion. The Member State of execution is entitled to pursue such an objective only in respect of persons who have demonstrated a certain degree of integration in the society of that Member State (see, to that effect, *Wolzenburg*, paragraphs 61, 67 and 73).
- 34 Thus, Member States may, when implementing Article 4(6) of Framework Decision 2002/584, limit, in a manner consistent with the essential rule stated in Article 1(2) thereof, the situations in which it is possible, as an executing Member State, to refuse to surrender a person who falls within the scope of Article 4(6), by making the application of that provision, when the person requested is a national of another Member State having a right of residence on the basis of Article 21(1) TFEU, subject to the condition that that person has lawfully resided for a certain period in that Member State of execution (see, to that effect, *Wolzenburg*, paragraphs 62 and 74).
- 35 However, if a Member State transposes Article 4(6) of Framework Decision 2002/584 into its national law, it must have regard to the fact that the scope of that provision is limited to persons who are nationals of the excluding Member State and to those who, if not 'nationals' of the executing Member State, are 'staying' or 'resident' there (see, to that effect, *Kozłowski*, paragraph 34).
- 36 The terms 'resident' and 'staying' must be defined uniformly in all the Member States since they concern autonomous concepts of European Union law (see *Kozłowski*, paragraphs 41 to 43).
- 37 First, although, as is apparent from paragraph 33 above, the Member States have a certain margin of discretion when they transpose Article 4(6) of Framework Decision 2002/584 into their domestic law, they are not entitled to give those terms a broader meaning than that which derives from a uniform interpretation of that provision in the Member States as a whole (see *Kozłowski*, paragraph 43).
- 38 In that regard, the Court has held that the term 'staying' cannot be interpreted in a broad way which would imply that the executing judicial authority could refuse to execute a European arrest warrant merely on the ground that the requested person is temporarily located on the territory of the executing Member State (*Kozłowski*, paragraph 36).
- 39 Second, in transposing Article 4(6) of Framework Decision 2002/584 into their domestic law, the Member States are required to comply with Article 18 TFEU.
- 40 In the light of the aim pursued, in particular, by Article 4(6) of Framework Decision 2002/584, as referred to in paragraph 32 above, namely to increase the chances of reintegrating into society a person sentenced to a custodial sentence in another Member State, the nationals of the Member State of execution and the nationals of other Member States staying or resident in the Member State of execution and who are integrated into the society of that State should not, as a rule, be treated differently (see, to that, effect, *Wolzenburg*, paragraph 68).



- 41 In those circumstances, it cannot be accepted that a requested person who, without being a national of the executing Member State, has been staying or been resident there for a certain period of time is not in any circumstances capable of having established connections with that State which could enable him to invoke that ground for optional non-execution (*Kozłowski*, paragraph 37).
- 42 As is apparent from paragraph 34 above, the Court has already recognised, with regard to a Member State which has implemented Article 4(6) of Framework Decision 2002/584 by laying down special conditions relating to the application of that provision, that, like a condition based on nationality for its own nationals, the condition of residence of a continuous period of five years for nationals of other Member States may be regarded as being such as to ensure that the requested person is sufficiently integrated in the Member State of execution (see *Wolzenburg*, paragraph 68).
- 43 The Court has also held that, where a Member State has implemented Article 4(6) of Framework Decision 2002/584 without, however, laying down specific conditions relating to the application of that provision, it is for the executing judicial authority – in order to determine whether, in a specific situation, there are connections between the requested person and the executing Member State which lead to the conclusion that that person ‘is staying’ or ‘resident’ within the meaning of Article 4(6) of that framework decision – to make an overall assessment of various objective factors characterising the situation of that person, which include, in particular, the length, nature and conditions of his presence and the family and economic connections which he has with the executing Member State (see, to that effect, *Kozłowski*, paragraphs 48 and 49, and *Wolzenburg*, paragraph 76).
- 44 In order to justify the difference in treatment between French nationals and the nationals of other Member States, the French Government submits, however, that Framework Decision 2002/584 did not lay down any mechanism for a Member State to enforce a sentence imposed in another Member State – Article 4(6) of Framework Decision 2002/584 referring in that regard to the law of the Member States – since the application of the ground for non-execution laid down in that provision is subject to the Member State’s undertaking to enforce that sentence ‘in accordance with its domestic law’.
- 45 The French Government states that, under its existing domestic law, it may undertake to enforce the sentence of a sentenced person only where that person is a French national. Unlike other Member States, the French Republic is not a party to the European Convention on the International Validity of Criminal Judgments signed on 28 May 1970 in the Hague, or to the Convention between the Member States of the European Communities on the Enforcement of Foreign Criminal Sentences of 13 November 1991. By contrast, like all the other Member States, the French Republic has ratified the Convention on the Transfer of Sentenced Persons signed on 21 March 1983 in Strasbourg, Article 3(1)(a) of which provides that sentenced persons may be transferred to serve the remainder of their sentence only to their State of nationality.
- 46 The French Government states that that is precisely the reason why the European Union legislature adopted Framework Decision 2008/909, which is intended, inter alia, to extend the principle of transferring sentenced prisoners to persons resident in a Member State. Under Article 25 thereof, Framework Decision 2008/909 is to apply to enforcement of sentences in cases where a Member State undertakes to enforce the sentence in cases pursuant to Article 4(6) of Framework Decision 2002/584. However, pursuant to Article 29 of Framework Decision 2008/909, Member States had until 5 December 2011 to implement the provisions of that decision. In addition, Article 28(1) of that framework decision provides that requests received before 5 December 2011 are to continue to be governed in accordance with the existing legal instruments on the transfer of sentenced persons.
- 47 However, as the French Government itself stated in response to a question from the Court at the hearing, and as also argued by the German and Netherlands Governments, although Article 3(1)(a) of the Convention on the Transfer of Sentenced Persons allows a State that is a party to that convention

to limit to its own nationals the possibility of a sentence imposed in another State being enforced within its territory, neither that convention nor any other rule of international law requires those States to make provision for such a rule.

- 48 Thus, at the hearing, the European Commission noted – without being contradicted on that point – that, under Article 3(4) of that convention, any State which is a party to it may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, define the term ‘national’ for the purposes of that convention as including certain categories of person staying or resident in that State without being nationals thereof. A number of the contracting parties have made such declarations, including, in particular, the Kingdom of Denmark, Ireland, the Italian Republic, the Republic of Finland and the United Kingdom of Great Britain and Northern Ireland.
- 49 It must therefore be concluded that the alleged impossibility, in the Member State of execution, of enforcing a custodial sentence imposed in another Member State on a non-French national cannot justify the difference in treatment between such a national and a French national arising from the fact that the ground for optional non-execution laid down in Article 4(6) of Framework Decision 2002/584 is reserved exclusively to French nationals.
- 50 Consequently, if Member States transpose Article 4(6) of Framework Decision 2002/584 into their domestic law, they cannot, without undermining the principle that there should be no discrimination on the grounds of nationality, limit that ground for optional non-execution solely to their own nationals, by excluding automatically and absolutely the nationals of other Member States who are staying or resident in the territory of the Member State of execution irrespective of their connections with that Member State.
- 51 That does not mean that the Member State in question must necessarily refuse to execute the European arrest warrant issued against a person resident or staying in that Member State, but, in so far as that person demonstrates a degree of integration in the society of that Member State comparable to that of a national thereof, the executing judicial authority must be able to assess whether there is a legitimate interest which would justify the sentence imposed in the issuing Member State being enforced within the territory of the executing Member State.
- 52 It follows that, although a Member State may, in transposing Article 4(6) of Framework Decision 2002/584, decide to limit the situations in which its executing judicial authority may refuse to a surrender a person who falls within the scope of that provision – thereby reinforcing the system of surrender introduced by that framework decision in accordance with the principle of mutual recognition (*Wolzenburg*, paragraphs 58 and 59) – it cannot exclude automatically and absolutely the nationals of other Member States staying or resident in its territory irrespective of their connections with it.
- 53 According to the case-law, although framework decisions may not, as laid down in Article 34(2)(b) EU, entail direct effect, their binding character nevertheless places on national authorities, and particularly national courts, an obligation to interpret national law in conformity (Case C-105/03 *Pupino* [2005] ECR I-5285, paragraphs 33 and 34).
- 54 When national courts apply domestic law they are therefore bound to interpret it, so far as possible, in the light of the wording and the purpose of the framework decision concerned in order to achieve the result sought by it. This obligation to interpret national law in conformity with European Union law is inherent in the system of the Treaty on the Functioning of the European Union, since it permits national courts, for matters within their jurisdiction, to ensure the full effectiveness of European Union law when they determine the disputes before them (see to that effect, in particular, Joined Cases C-397/01 to C-403/01 *Pfeiffer and Others* [2004] ECR I-8835, paragraphs 113 and 114, and Case C-282/10 *Dominguez* [2012] ECR, paragraph 24).

- 55 It is true that this principle of interpreting national law in conformity with European Union law has certain limitations. Thus the obligation on a national court to refer to the content of a framework decision when interpreting and applying the relevant rules of domestic law is limited by general principles of law and it cannot serve as the basis for an interpretation of national law *contra legem* (see, to that effect, *Pupino*, paragraph 47, and *Dominguez*, paragraph 25 and the case-law cited).
- 56 However, the fact remains that the principle that national law must be interpreted in conformity with European Union law also requires national courts to do whatever lies within their jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by it, with a view to ensuring that the framework decision in question is fully effective and to achieving an outcome consistent with the objective pursued by it (see, to that effect, *Dominguez*, paragraph 27 and the case-law cited).
- 57 In the main proceedings, the national court must to that end take into consideration not only the provisions intended to transpose Framework Decision 2002/584, but also the principles and provisions of domestic law governing the conclusions which a court is entitled to draw from the existence of discrimination prohibited under that law, and in particular the principles and provisions enabling that court to alleviate such discrimination until the legislature has taken the measures necessary to eliminate it.
- 58 If such an application of domestic law were possible, it would be for the national court, on the basis of an overall assessment of the objective factors characterising the situation of the requested person, to examine whether, in the main proceedings, there are sufficient connections between the person and the executing Member State – in particular family, economic and social connections – such as to demonstrate that the person requested is integrated in that Member State, so that he is in fact in a comparable situation to that of a national.
- 59 In the light of all of the foregoing, the answer to the questions referred is that Article 4(6) of Framework Decision 2002/584 and Article 18 TFEU must be interpreted as meaning that, although a Member State may, in transposing Article 4(6), decide to limit the situations in which an executing judicial authority may refuse to surrender a person who falls within the scope of that provision, it cannot exclude automatically and absolutely from its scope the nationals of other Member States staying or resident in its territory irrespective of their connections with it.
- 60 The national court is required, taking into consideration the whole body of domestic law and applying the interpretative methods recognised by it, to interpret that law, so far as possible, in the light of the wording and the purpose of Framework Decision 2002/584, with a view to ensuring that that framework decision is fully effective and to achieving an outcome consistent with the objective pursued by it.

### Costs

- 61 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

**Article 4(6) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States and Article 18 TFEU must be interpreted as meaning that, although a Member State may, in transposing Article 4(6), decide to limit the situations in which an executing judicial authority may refuse to surrender a person**

**who falls within the scope of that provision, it cannot automatically and absolutely exclude from its scope the nationals of other Member States staying or resident in its territory irrespective of their connections with it.**

**The national court is required, taking into consideration the whole body of domestic law and applying the interpretative methods recognised by it, to interpret that law, so far as possible, in the light of the wording and the purpose of Framework Decision 2002/584, with a view to ensuring that that framework decision is fully effective and to achieving an outcome consistent with the objective pursued by it.**

[Signatures]